

FOLLOW THE MONEY

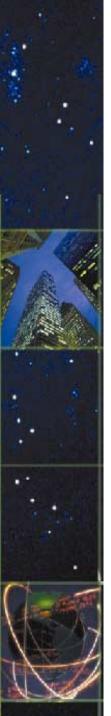
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STATE BAR PRESENTATION
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OFFICE OF FOREIGN ASSETS CONTROL REGULATIONS

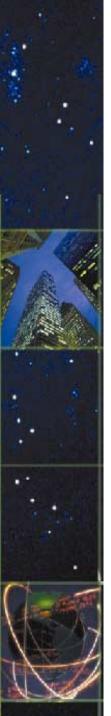
- Commonly known as "OFAC"
- Economic sanctions
 - 10 federal laws, including USA PATRIOT Act
- Applies to all U.S. businesses and citizens
- Applies to provision of services or goods, including financial





TARGETS OF ECONOMIC SANCTIONS

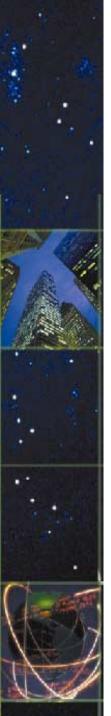
- Countries
- Governmental agencies and officials
- Businesses (for profit and non-profit)
- Individuals
- Groups
 - Taliban since 1999
 - Terrorists since 1996
- Specially Designated Nationals List ("SDN List")



COUNTRIES AND GROUPS CURRENTLY COVERED

- The Balkans
- Burma (Myanmar)
- Cuba
- Iran
- Iraq
- Liberia
- Libya





COUNTRIES AND GROUPS CURRENTLY COVERED

(Gont'diks

- Non-Proliferation
- North Korea
- Sierra Leone
- Syria
- Sudan
- Taliban (Afghanistan)





COUNTRIES AND GROUPS CURRENTLY COVERED

- (Gentod)_m
- Unita
- Yugoslavia





ACTIONS REQUIRED

- Blocking
- Rejecting
- Reporting
- General and Specific Licenses





PENALTIES

- Civil
- Criminal
 - Up to \$10,000,000 per count for corporations
 - Up to \$5,000,000 per count for individuals
 - Up to 30 years imprisonment
 - Regulatory Examinations





TRANSACTIONS COVERED

- Virtually all financial transactions
 - Deposit accounts
 - ACH
 - Wire Transfers
 - Loans
 - Letters of Credit
 - Broker/Dealer accounts





ACTIONS TO TAKE

- Manual Review
- Interdict Software Systems
- Watch for all names: account holder, debtor, customer, buyer, seller, originator, recipient, beneficiary, trustee, banks, etc.
- Training





CHECK

- All current accounts and loans
- New accounts and loans before opening
- Run all newly added names on SDN List against entire database
 - Names can be added at any time
 - Many have been added since 9/11





NAME MATCHES

- False positives
- Due diligence
- Assistance from OFAC
- Notify customer (contrast to SARs)
- Sometimes conflicts with foreign laws





SUSPICIOUS ACTIVITY REPORTS

- Banks must file if:
 - Transactions aggregate to \$5,000 or more
 - Appear to involve funds from illicit activity
 - Attempt to avoid a reporting requirement
 - Transaction has no apparent lawful purpose or is unusual for the customer and due diligence results in no reasonable explanation





SUSPICIOUS ACTIVITY REPORTS (Cont'd)

- Crime to disclose filing of SAR
- Can convey underlying actions of employee to other institutions (but not SAR itself)
 - No safe harbor for malice
 - Voluntary





CONTROL LISTS

- Different than OFAC
- Provided by regulators to banks
- Report back to regulators
- File SARs





FINANCIAL ANALYSIS SINCE 9/11 Per DOJ

- 1000 search warrants
- 1500 financial subpoenas requesting information on over 9600 persons/accounts
- Current status of financial investigations
 - -750+ Accounts
 - 300+ Checking/Savings Accounts
 - 450+ Credit Card Accounts





FINANCIAL ANALYSIS SINCE 9/11 Per DOJ (Cont'd)

- 500+ Wire Transfers
- -50+ International Bank Accounts
- 225+ Foreign Wire Transfers





KNOW YOUR CUSTOMER STANDARDS

- Basel Due Diligence
- FATF Recommendations
- Regulatory Expectations





ESSENTIAL ELEMENTS

- Customer acceptance policy (higher risk accounts)
- Customer identification
- Ongoing monitoring of high risk accounts
- Risk management





ACTIONS

- Authenticate identity of customers
- Determine true ownership of accounts
- Determine source of funds
- Monitor for unusual activity





- Special account opening procedures for high risk customers
- Special scrutiny of:
 - Private banking customers
 - Correspondent accounts





- Payable through
- Foreign customers (especially officials of foreign governments)
 - Why do they want account in US?
- Accounts with lots of international activity
- OFAC scans
- Clear and consistent standards





- Clear recordkeeping and retention requirements
- If information cannot be verified consider closing account
- Don't rely on referrals
- Don't do business with a customer who insists on anonymity or gives a fictitious name





- Need access to offshore records— USA PATRIOT Act rules
- Require waiver of other country's privacy laws for international customers





- KYC should be part of the risk management and control procedures
- Regular compliance reviews should be done
- Regular audits





- Update programs, policies and procedures as needed
- Train both new and ongoing employees
- File SARs whenever required

